

Attorney Docket No.: F7571(V)
Serial No.: 10/005,702
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BRIEF FOR APPELLANT

Sir:

This is a Brief on appellant's Appeal from the Examiner's Final Rejection concerning the above-identified application.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our deposit account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18.; 37 C.F.R. §1.136.

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I. REAL PARTY IN INTEREST

The application is assigned to Lipton, Division of Conopco, Inc. Conopco,, Inc. is owned by Unilever United States which in turn is owned by Unilever N.V. and Unilever PLC.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1, 3, 5 through 8, 10 through 16 are rejected and are under appeal.
Claims 2, 4 and 9 are canceled.

IV. STATUS OF AMENDMENTS

The response filed after final rejection was considered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a pourable water continuous frying composition (specification, page 3, lines 4-5) which is an emulsion (specification, page 3, line 12) and which has a Bostwick value at 15°C of at least 5 (specification, page 3, lines 5-6), comprising more than 50 (specification, page 9, line 20) and up to 80 wt% fat (specification, page 9, line 20), 0.1 to 5 wt.% salt (specification, page 7, line 16) and 0.05

to 2 wt% lecithin (specification, page 7, line 19) as antispattering agent, 0.35 to 5 wt.% (specification, page 6, line 28) of at least one emulsifier having a hydrophilic/lipophilic balance value of at least 7, (specification, page 5, lines 4-7) and optionally a biopolymer (specification, page 8, lines 30-31), the amount of biopolymer when added being at most 0.3 wt% on total composition weight (specification, page 23, line 5), the fat being dispersed in a water phase as droplets that have an average droplet size (d_{43}) of less than 8 μm (specification, page 11, line 8; page 2, lines 31-32).

Claim 10 relates to a process (specification, page 3, line 11) for the preparation of a pourable, water continuous frying composition (specification, page 3, lines 4-5) which is an emulsion (specification, page 3, line 12) and which has a Bostwick value at 15° C of at least 5 (specification, page 3, lines 5-6) comprising more than 50 and up to 80 wt% fat (specification, page 9, line 20), 0.1 to 5 wt.% salt (specification, page 7, line 16) and 0.05 to 2 wt% lecithin (specification, page 7, line 19) as anti-spattering agent (specification, page 7, lines 6-11), 0.35 to 5 wt.% (specification, page 6, line 28) of at least one emulsifier having a hydrophilic/lipophilic balance value of at least 7 (specification, page 5, lines 4-7), and optionally a biopolymer (specification, page 8, lines 30-31), the amount of biopolymer when added being at most 0.3 wt% on total composition weight (specification, page 23, line 5), said process comprising the steps of emulsifying a fat phase comprising fat phase ingredients with an aqueous phase comprising aqueous phase ingredients such that the resulting emulsion has an average fat droplet size d_{43} that is below 8 μm (specification, page 11, line 5).

Claim 12 is directed to a process for preparing a foodstuff by shallow frying (specification, page 12, line 10) comprising the steps of heating (specification, page 12, line 12) a water-continuous (specification, page 5, lines 1-2) emulsion (specification, page 3, line 12) composition in a frying pan (specification, page 12, line 12) to a desired temperature (specification, page 12, line 13), said composition having a Bostwick value at 15° C of at least 5 (specification, page 3, lines 5-6), comprising more than 50 and up

to 80 wt% fat (specification, page 9, line 20), 0.1 to 5 wt.% salt (specification, page 7, line 16) and 0.05 to 2 wt% lecithin (specification, page 7, line 19) as anti-spattering agent (specification, page 7, lines 6-11), 0.35 to 5 wt.% (specification, page 6, line 28) of at least one emulsifier having a hydrophilic/lipophilic balance value of at least 7 (specification, page 5, lines 4-7), and optionally a biopolymer, the amount of biopolymer when added being at most 0.3 wt% on total composition weight (specification, page 23, line 5), the fat being dispersed in a water phase to an average droplet size (d_{43}) of less than 8 μm (specification, page 11, line 8; page 2, lines 31-32); and then placing a foodstuff in the heated composition (specification, page 12, lines 13-14).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Office asserts that claims 1, 3, 5-8 and 10-16 are obvious under 35 USC §103(a) as being unpatentable over PAJ and that PAJ discloses a composition which is an oil-in-water emulsion containing 10 to 50% fat, 0.03 to 0.3 wt.% emulsifier having an HOB of greater than or equal to 7, a viscosity of 1,000-7,000 centipoise at 20° C and an average oil drop particle size of less than or equal to 30 microns, for addition to a wok or frying pan.

VII. APPELLANT'S ARGUMENTS

Rejection of Claims 1, 3, 5-8 and 10-15 under 35 USC §103(a)

The invention is directed to a pourable water-continuous emulsion composition for the shallow frying of foods. Applicants' discovery combines specific emulsifiers, and

antisattering agents, at specific levels, to product storage-stable shallow frying compositions having a fat content greater than 50% wt% for minimal spattering.

The PAJ reference is directed to seasoning compositions for pan fried foods, especially stir-fried foods. The compositions appear to contain 10 to 50 wt% oil (preferably 20 – 40%), and 0.3 wt% emulsifier (lecithin is disclosed as an emulsifier). The composition is used for introducing seasoning into a wok, thereby reducing the “oozing of water” from food materials during cooking and reducing the “waterishness” of the finished cooking (abstract).

In contrast, applicants’ invention is directed to compositions for shallow-frying which comprise more than 50 wt% to 80 wt% fat and an emulsifier level of 0.35 wt% to 5 wt%. The Office points to no teaching of these fat levels in PAJ. Further, applicants employ a higher level of emulsifier, to achieve storage stable compositions, than the levels taught by PAJ.

Applicants submit that the Office has identified no motivation for a person of ordinary skill in the art to modify the compositions disclosed in PAJ to arrive at the applicant’s invention as recited in claim 1. For instance, PAJ appears to teach on page 4 of the machine translation that it is not desirable to increase the oil level about 50% by weight because the cooking becomes too oily. It is noted that present claim 16 recites a fat level of 55 to 75 wt% which is even more remote from the teachings of PAJ.

Secondly, PAJ appears to teach away from using more than 0.3 wt% emulsifier in the seasoning composition because of burning of the food material and the accompanying undesirable effect on the flavor of the stir-fried dish (bottom of page 4 to top of page 5).

Finally, the Office points to no teaching by PAJ about salt functioning as an antispattering agent in the composition. Although the undersigned understands that both lecithin and salt were known as antispattering agents in oil-continuous emulsions, the Office points to no teaching by PAJ that salt functions with lecithin as an antispattering agent.

In summary, a person of ordinary skill in the art reading PAJ would have been dissuaded from modifying the seasoning compositions taught therein to bring any one of the elements of oil content, emulsifier level or antispattering agents into the ranges required for applicants' shallow-frying composition, let alone all three elements at the same time.

Rejection of Claim 16 Under 35 USC §103(a)

As pointed out above, claim 16 is even further remote from the PAJ reference in that it recites a lower level of fat of 55 wt%. Thus, even less does PAJ suggest use of 55 wt%. Rather, it suggests up to 50 wt% fat.

In view of the foregoing, it is respectfully requested that the rejection be reversed and that the application, as amended, be allowed.

VIII. CLAIMS APPENDIX

1. (previously presented) Pourable, water continuous frying composition which is an emulsion and which has a Bostwick value at 15°C of at least 5, comprising more than 50 and up to 80 wt% fat, 0.1 to 5 wt.% salt and 0.05 to 2 wt% lecithin as anti-spattering agent, 0.35 to 5 wt.% of at least one emulsifier having a hydrophilic/lipophilic balance value of at least 7, and optionally a biopolymer, the amount of biopolymer when added

being at most 0.3 wt% on total composition weight, the fat being dispersed in a water phase as droplets that have an average droplet size (d_{43}) of less than 8 μm .

2. (cancelled)

3. (original) Pourable composition according to claim 1 wherein the emulsifier is selected from the group comprising di-acetyl tartaric acid esters of monoglycerides and/or diglycerides (DATEM), polyoxyethylene sorbitan fatty acid esters (Tween), sucrose esters, sodium stearyl lactylate (SSL), polyglycerol esters (PGE), acetylated pectin, esters of citric acid with monoglycerides and/or with diglycerides, lactic acid esters of mono-and/or diglycerides, succinic acid esters of mono-and/or diglycerides; or combinations thereof.

4. (cancelled)

5. (previously presented) Pourable composition according to claim 1 wherein the emulsifier is DATEM.

6. (original) Pourable composition according to claim 1 characterised by a pH of between 3 and 8.

7. (original) Pourable composition according to claim 1 comprising a biopolymer.

8. (original) Pourable composition according to claim 7 wherein the biopolymer is present in an amount of from 0.01 to 0.3 wt%.

9. (cancelled)

10. (previously presented) Process for the preparation of a pourable, water continuous frying composition which is an emulsion and which has a Bostwick value at 15°C of at least 5, comprising more than 50 and up to 80 wt% fat, 0.1 to 5 wt.% salt and 0.05 to 2 wt% lecithin as anti-spattering agent, 0.35 to 5 wt.% of at least one emulsifier having a hydrophilic/lipophilic balance value of at least 7, and optionally a biopolymer, the amount of biopolymer when added being at most 0.3 wt% on total composition weight, said process comprising the steps of emulsifying a fat phase comprising fat phase ingredients with an aqueous phase comprising aqueous phase ingredients such that the resulting emulsion has an average fat droplet size d_{43} that is below 8 μm .

11. (previously presented) Process for the preparation of a pourable, water continuous frying composition according to claim 10 wherein the aqueous phase comprises a di-acetyltartaric acid ester of mono- and/or diglycerides and has a pH of 4 or higher.

12. (previously presented) Process for preparing a foodstuff by shallow frying comprising the steps of heating a water-continuous emulsion composition in a frying pan to a desired temperature, said composition having a Bostwick value at 15°C of at least 5, comprising more than 50 and up to 80 wt% fat, 0.1 to 5 wt.% salt and 0.05 to 2 wt% lecithin as anti-spattering agent, 0.35 to 5 wt.% of at least one emulsifier having a hydrophilic/lipophilic balance value of at least 7, and optionally a biopolymer, the amount of biopolymer when added being at most 0.3 wt% on total composition weight, the fat being dispersed in a water phase to an average droplet size (d_{43}) of less than 8 μm ; and then placing a foodstuff in the heated composition.

13 (previously presented) The composition according to claim 5 wherein the DATEM is present in an amount of from 0.3 to 3 wt. %.

14. (previously presented) The composition according to claim 1 wherein the average droplet size d43 is less than 6µm.

15. (previously presented) The composition according to claim 1 wherein the average droplet size d43 is from 0.35 to 4 µm.

16. (previously presented) The composition according to claim 1 comprising 55 to 75 wt% fat.

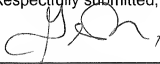
IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.

Respectfully submitted,



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